

HOUSE BILL 492

By Moore

AN ACT to amend Tennessee Code Annotated, Title 9,
Chapter 4 and Title 50, relative to expenditure of
public funds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 9, Chapter 4, Part 51, is amended by
adding the following language as a new section:

Section 9-4-5117.

(a) As used in this section, unless the context otherwise requires:

(1) "Attorney general" means the Tennessee attorney general and
reporter;

(2) "Employee" means any individual employed by a publicly-funded
employer, including but not limited to any individual engaged in performing work
providing services, or fulfilling contracts that are, in whole or in part, directly or
indirectly, paid for, financed, derived, or subsidized by, with, or from public funds,
and any individual employed by any employer in connection with such work;

(3) "Employee influence activity" means any activity, effort or attempt by
a publicly funded employer to influence its employees regarding their decisions
about whether to support or oppose a labor organization that represents or seeks
to represent those employees or whether to become a member of any labor
organization; to encourage or discourage any employee from joining or refraining
from joining a labor organization or from participating or refraining from
participating in any activities in support thereof; or to encourage or discourage
any employees from participating in or refraining from participating in any effort
by a labor organization or any other form of employee self-organization or any

activity in which employees participate for the purpose of mutual aid or protection. "Employee influence activity" includes conducting meetings during working hours if any such meetings are conducted for the purpose of or in connection with employee influence activity; training managers, supervisors, or other personnel regarding methods or techniques of or related to employee influence activities; to hire, retain, pay the salary or any other compensation to, or to defray any expenses of any individual, corporation, unincorporated association, partnership, firm, consultancy or other entity, or any individual acting for or on behalf of same, for performing research, planning, advising, preparing, coordinating, carrying out, or engaging in employee influence activities;

(4) "Employer" means any individual, corporation, unincorporated association, partnership, institution, trustee, trustee in bankruptcy, receiver, government agency or body, or other legal entity or association, or any director, officer, or managerial employee acting as an agent for such individual, corporation, unincorporated association, partnership, institution, trustee, trustee in bankruptcy, receiver, government agency or body, or other legal entity or association, other than the state, that employs at least one (1) person in the state, and includes contractors, sub-contractors, grantees and sub-grantees of employers;

(5) "Publicly-funded employer" means the state or any employer that receives public funds, whether such funds are received through payment, grant, allocation, reimbursement, or subsidy, for supplying services to the state, for the performance of public works pursuant to contract with the state, for or in connection with the provision of services to or on behalf of the state or its citizens, or for the performance of any contract with the state;

(6) "Public funds" means the revenues of the state from whatever source derived and any money drawn from the accounts or treasury or any special fund or trust fund of the state or any of its subordinate units and political subdivisions, insofar as such revenues and monies are appropriated, expended, paid over, granted, allocated, reimbursed, transferred, or contributed to any other person or entity for the purpose of supplying services to the state, for the performance of public works pursuant to the state or its citizens, or for or in connection with the performance of any contract with the state; and

(7) "State" includes the state of Tennessee and any agency, office, officer, department, division, board, commission, authority, instrumentality, or political subdivision thereof; any corporation, entity or body created by state law; and any individual designated by or with authority to act for the state or any of its subordinate units or political subdivisions.

(b) Except as provided in subsection (f):

(1) The state shall not engage in any employee influence activity;

(2) The state shall not pay, grant, or transfer public funds or, with public funds, reimburse a publicly funded employer for costs or expenditures arising from or in connection with any employee influence activity; and

(3) Publicly-funded employers shall not engage in employee influence activity for which public money is used, directly or indirectly, to pay any cost or expense or for which any cost or expense is defrayed with or as to which reimbursement is sought from public funds, in whole or in part.

(c) Nothing in this section shall be interpreted to limit in any way the right of a publicly-funded employer to express any views to its employees or others, or to engage

in any otherwise lawful employee influence activity, as long as such expression is made or action conducted without utilizing public funds.

(d) As a condition of receiving public funds, a publicly-funded employer, other than the state, shall certify to the department of finance and administration that it will not engage in employee influence activity for which public money is used, directly or indirectly, to pay any cost or expense or for which any cost or expense is defrayed with or as to which reimbursement is sought from public funds, in whole or in part, and that it will otherwise comply with all the requirements of this section. Certification shall be required in requests for reimbursements from public funds, requests to participate in state programs, bid proposal submissions, grant request applications and service contracts. The department of finance and administration shall develop a certification form for use by publicly funded employers.

(e) A state contractor, grant recipient or program participant that incurs costs or expenses related to employee influence activities shall maintain records sufficient to show that public monies have not been used and are not being sought for the purpose of engaging in employee influence activities. These records shall be provided to the attorney general upon request, within ten (10) days of such request.

(f) The provisions of this section shall not apply when the state or publicly-funded employer is:

(1) Performing an activity required by federal or state law or by a collective bargaining agreement;

(2) Addressing a grievance or entering into, negotiating, or administering a collective bargaining agreement or other agreement with a labor organization;

or

(3) Using bulletin boards, e-mail or other facilities normally used for communication with or by employees, by any employee, labor organization, groups of employees, or bona fide employee organization, for discussion of issues related to unionization or collective bargaining if any applicable law or collective bargaining agreement permits or requires a publicly funded employer to allow such use; or using or accessing facilities or property by any employee, labor organization, groups of employees, or bona fide employee organization if any applicable law or collective bargaining agreement permits or requires a publicly-funded employer to allow such use or access.

(g)

(1) Any citizen or taxpayer of the state who complains that a publicly-funded employer is using or has used public monies for employee influence activities may request the attorney general to investigate the matter. The attorney general shall commence an investigation if there is reasonable cause to believe a violation is occurring, has occurred or is likely to occur and shall issue a report within forty-five (45) days of receiving a complaint.

(2) A civil action for a violation of this section may be brought by the attorney general, on behalf of the state, for injunctive relief, damages, civil penalties, and other appropriate equitable relief. All damages and civil penalties collected shall be paid to the general fund.

(3) A citizen or taxpayer may bring an action following notification to the attorney general. If, at any time after the citizen or taxpayer has commenced such action, the attorney general commences an action with regard to the same matter, the suit by the citizen or taxpayer shall be held in abeyance. The court may, in its discretion, permit the citizen or taxpayer to intervene and participate in

any proceedings connected with the attorney general's action. If the attorney general subsequently declines to proceed with its action, the citizen's or taxpayer's action shall be reopened and proceed. If the attorney general's action is dismissed by the court or resolved by settlement between the parties, the citizen's or taxpayer's action shall be dismissed or otherwise resolved as provided in such settlement to the extent that such actions arise out of the same alleged violations.

(4) The court shall order the publicly-funded employer, other than the state, to cease and desist from employee influencing activities and to reimburse the state in the amount of any prohibited expenditures plus interest and damages. The court shall provide such other and further relief, legal and equitable, as is just and appropriate, including, when the action was commenced by a citizen or taxpayer, reasonable costs and attorneys fees. Whenever a citizen's or taxpayer's action is superseded by an action brought by the attorney general that results in a finding of a violation of this section, the citizen or taxpayer may recover reasonable costs and attorneys fees incurred prior to the initiation of the attorney general's action.

(5) In any action under this section, it shall be presumed that public moneys were used for any costs or expenditures in connection with any employee influence activity unless the publicly-funded employer establishes by a preponderance of the evidence that, prior to engaging in such activity, the publicly-funded employer made reasonable efforts to segregate its public funds from other revenue sources, and that any costs or expenditures associated with such employee influence activity were entirely defrayed from revenues other than any public funds of which the publicly funded employer is a recipient, grantee,

payee or beneficiary. If public funds and other funds are commingled, any costs incurred or expenses related to employee influence activities shall be presumed to derive pro rata from public funds.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.